IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

WTR Nos.65 and 66 of 1995
Date of decision:8.9.2006

Commissioner of Wealth-tax Patiala.

....Petitioner

versus

Shri Darshan Kumar Oswal, Vardhman Spinning and General Mills Limited, Ludhiana.

...Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. S.K.Garg Narwana, Advocate for the revenue.
Mr. SK Mukhi, Advocate for the respondent.

JUDGMENT:

Following questions of law have been referred for opinion of this court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 25.6.1993 in respect of assessment years 1980-81 and 1981-82:-

> "1. Whether, on the facts and in the circumstances of the case, the gold bonds held by the assessee were exempt from being assessed under the Wealth tax Act till these were not redeemed though the date of redemption was over?
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> 2.Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount of deposit under the CDS was exempt under the Wealth-tax Act?"

The assessee had certain National Defence Gold Bonds which were to be redeemed on 27.10.1990. The WTO valued gold receivable under the said bonds at Rs.3,36,090/-, rejecting the contention of the

assessee that the bonds were exempt from being assessed under the Wealth Tax Act till they are redeemed. The WTO also included deposit of Rs.66,670/- in CDS.

The Tribunal upheld the plea of the assessee and held that the assessee was entitled to exemption in respect of both the items. Findings of the Tribunal are:-

> "20. Ground No.6 relates to the addition of Rs.12,750/- on account of interest on CDS. The ld. Counsel for the assessee has submitted that interest on CDS is exempt. The ld. DR has argued that there was nothing to show that such interest was exempt under any provision of law. The ld. Counsel has, however, invited our attention to the circular of the CDOT, relating to the annuities at pages 7 and 8 of assessee's compilation. We have perused the paper and we find that the so called circular related to the annuities and not the interest on CDS. Therefore, the claim of the assessee does not succeed. The circular its said to be relevant does not actually relate to interest on CDS but it pertains to the annuities. We, therefore, decline to accept the contention of the ld. counsel. Ground No.6 is, therefore, rejected.
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> 22. Ground No.2 relates to the valuation of gold bonds on the basis of market price on the date of actual redemption. The CIT(A) has followed the order of the Tribunal in the case of Rattan Chand & Sons. The ld. D.R.has argued that the view taken by the CIT(A) was not correct because the date on which the bonds could be redeemed as the relevant date and not the date of actual redemption by the assessee.
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> 23. The ld. Counsel for the assessee has in reply argued that the Tribunal has already held the view that the bonds in the hands of the assessee were exempt till redeemed though the date of redemption might be over. If the

assessee did not choose to redeem, he is entitled to claim exemption. It has further been argued by the ld. counsel that the CIT(A) has only remanded the case to the WTO on this question for reappraisal in the light of earlier decision. We, therefore, do not find any fault with the order of the CIT(A) and ground No.2 also fails."

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We find that the first question is covered by judgment of Gujarat High Court in **Shankerlal Gafurbhai Patel v. Commissioner of Income Tax,** (2004) 269 ITR 508. In the said judgment,it was noticed that gold bonds were granted exemption under Section 5(1) (xvia) of the Wealth Tax Act, 1957 (for short, 'the Act') from 24.12.1965 to March 31, 1993. It was observed that exemption continued irrespective of date of maturity. Relevant observations are :-

"Thus, we have to come to a conclusion that there was no change even after October 27, 1980, so far as the exemption in respect of the gold bond is concerned and the gold bond remained as it was even after its date of maturity and the exemption given to it in respect of payment of wealth-tax continued. Looking to the fact that section 5(1)(xvia) continued to give exemption to the gold bond, one can believe that the intention of the Legislature was to give benefit to its holder in respect of payment of wealth-tax. Had there been no such intention, there was no purpose in continuing the exemption in clause 5(1)(xvia) even after October 27, 1980. One cannot presume that the Legislature did not know the fact that the gold bonds were to mature on October 27, 1980. It is also pertinent to note that while exempting the gold bonds in respect of payment of wealth-tax under the Act, no provision was incorporated that the bonds would be subject to exemption only till its date of maturity. Even after the date of maturity when the statute continued the provision with regard to the exemption, we believe that

> the intention of the Legislature was to give exemption in respect of payment of wealth-tax to the holders of gold bond."

Following the above decisions, we decide the first question in favour of the assessee and against the revenue.

We find that the second question is covered by judgment of the Calcutta High Court in **Smt.Sunanda Devi Singhania v. Commissioner of Wealth Tax,** (1993) 204 ITR 842, wherein the question was answered in favour of the revenue and against the assessee. Considering the question, it was observed :-

> "The object of the Compulsory Deposit Scheme (Income tax Payers) Act, 1974, was to augment the resources for economic development of the country and with that object in view, it required certain categories of income tax payers to deposit a portion of their income in accordance with the scheme. It is the income of the depositor which is refunded by instalments. An annuity means where an income is purchased with a sum of money and the capital has gone and has ceased to exist, the principal having been converted into an annuity (sic). Ordinarily, an annuity is a money payment of a fixed sum annually made and is a charge personally on the grantor. Thus, it is a right to receive a specified sum and not an aliquot share in the income arising from any fund or property. In order to constitute an annuity, the payment to be made periodically should be a fixed or pre-determined one, and it should not be liable to any variation depending upon any ground relating to the general income of the fund or estate which is charged for such payment. In order to constitute an annuity, it is not essential that the payment must be made once a year only and not monthly or quarterly. What is necessary is that the payments made must constitute a certain sum payable in a year to the annuitant. For the assessment years 1957-

58 to 1974-75, the definition of the term “assets” in section 2(e) specifically excluded any right to any annuity in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant. For and from the assessment year 1975-76, the exclusion is in respect of a right to any annuity (not being an annuity purchased by the assessee or purchased by any other person in pursuance of a contract with the assessee) in any case where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lump sum grant. In other words, the value of the assessee's right to receive any annuity purchased by him or purchased by another person in pursuance of a contract with the assessee is to be regarded, for and from the assessment year 1975-76, as his asset for the purpose of the levy of wealth-tax, irrespective of whether such annuity is commutable or not.”

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“In the light of the aforesaid decisions, we have to consider whether the deposit under the Compulsory Deposit Scheme is an annuity, not purchased by the assessee and is, therefore, exempt. It is not disputed that unless exemption can be claimed as an annuity under section 2(e)(2)(ii), it would clearly be includible in the net wealth of the assessee for the simple reason that it is a deposit in the name of the assessee in a bank with only the restriction on the right of withdrawal thereof for two years absolutely and, thereafter, the right to withdraw one-fifth thereof for the next five years. Interest runs on the amount in deposit at more or less the higher rate of interest. It has all the attributes of a deposit in a bank because the assessee, when he makes a deposit, gets a pass book in which an entry is made as a is made in the case of any other deposit in a bank. Interest is calculated

on the balance due every year by the bank and credited in the pass book. The assessee has a right of withdrawing it subject to the restrictions noted earlier.

An annuity is generally a fixed sum of money payable periodically and not subject to variation. An annuity cannot be related to a fixed proportion of capital. When an assessee deposited out of his income under the Compulsory Deposit Scheme Act, it remains invested in the bank and income is transferred into capital. Deposit is no doubt made out of the earned income, but it does not retain the character of income thereafter when invested. A fixed deposit in a bank is a capital asset."

We are in respectful agreement with the above view that CDS is not annuity and is not exempted under Section 2(e)(2)(ii)of the Act.

Accordingly, following the above decisions, we answer the second question in favour of the revenue and against the assessee.

(Adarsh Kumar Goel)
Judge

September 08, 2006
'gs'

(Rajesh Bindal)
Judge